

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5332 OF 2005
ALONG WITH
WRIT PETITION NO.5333 OF 2005

Shri Sambha Maruti Ghadage

... Petitioner

Vs.

Shivaji Sugar Mills Ltd. & Ors.

... Respondents

Mr. A.A. Valsankar h/f Pankaj J. Das for the
petitioner.

None for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 18TH AUGUST, 2005.

P.C.:-

1. Both these petitions can be disposed of by a common order because the issue involved is the same. The petitioner in both these petitions is original defendant 2 in R.C.S. No.355 of 1977 and R.C.S. No.356 of 1977 filed in the court of Civil Judge, Junior Division, Pandharpur. The suits were filed against defendant 2 and his brother Limba for recovery of possession. It appears that in both these suits, issue as regards tenancy was raised and the matter came up to the High Court twice. On one occasion, it reached the Supreme Court also. Ultimately, the suits filed in the year 1977 came to be disposed of in the year 2003. R.C.A. No.66 of 2003 and R.C.A. No.67 of 2003 came to be filed by defendant 2 against the decrees in R.C.S. No.355 of 1977 and R.C.S. No.356 of 1977 respectively. In these appeals, an

applications for amendment of written statement came to be filed on 29/10/2004. That means, these applications are filed almost after 26 years.

2. There is one significant aspect of the matter which also will have to be noted. It appears that in Second Appeal No.443 of 1982 and Second Appeal No.444 of 1982, the present petitioner was respondent 2 and his brother Limba was respondent 1. In those second appeals, consent terms came to be filed in this court on 14/2/1990. Brother of defendant 2 entered into a compromise with the respondent therein. Now belatedly, defendant 2 wants to urge that there is no partition between him and his brother and that the compromise is bad in law.

3. It is true that while considering the amendment application, the courts are not to adopt hyper technical approach and the amendment application has to be liberally construed so as to avoid multiplicity of the proceedings. However, it is also equally clear that when it appears to the court that the amendment application is not bonafide and that it is filed to procrastinate the litigation, the court must reject it. In this case, I have not the slightest doubt that this is an attempt to procrastinate the litigation. In a matter which reaches this court twice and reaches the Supreme Court once and where a compromise was entered into between the brother of the petitioner and the plaintiff in a proceeding in which the petitioner was a party, which is now tried to

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be set at naught, no other conclusion can be reached except that the amendment applications are not bonafide. No interference is called for. There is no substance in the petitions. Hence, both the petitioners are rejected.

(SMT. RANJANA DESAI, J.)